

TIR 16-4: Tax Amnesty Program FY16

I. Introduction

The Commissioner of Revenue ("Commissioner") is establishing a sixty (60) day tax amnesty program ("Amnesty Program") from April 1, 2016, through May 31, 2016. [1] The Amnesty Program will be open to individual and business taxpayers who either have failed to file a tax return or failed to report the proper tax due on a prior tax return that was due on or before December 31, 2015, without regard to extensions. Most tax types will be eligible, including personal income tax, corporate excise and sales/use tax. Eligible taxpayers will be able to file delinquent or amended returns, pay the outstanding tax and interest, and benefit from a waiver of most tax penalties. Non-filers may also benefit from a three-year (36 months) limited look-back period. To simplify the process for seeking amnesty, the Commissioner has created a short online form ("Amnesty Return") for eligible taxpayers to complete as part of this Amnesty Program. This TIR discusses the following:

- the amnesty period and due dates for payments,
- eligibility requirements for taxpayers and tax types,
- general criteria of the Amnesty Program,
- benefits of the Amnesty Program,
- procedures related to the Amnesty Program, and
- exceptions and limitations.

II. Amnesty Period and Payment Due Date

The Amnesty Program will begin on Friday, April 1, 2016, and extend through Tuesday, May 31, 2016 (the "Amnesty Period"). All Amnesty Returns and payments must be submitted electronically to the Department of Revenue ("Department") during this period no later than 11:59 p.m. Eastern Daylight Time on Tuesday, May 31, 2016.

III. Eligibility Requirements: Taxpayers and Tax Types

A waiver of tax penalties under the Amnesty Program is available to an eligible taxpayer. An "eligible taxpayer" is any individual or business taxpayer that:

- failed to file a tax return that was due on or before December 31, 2015, or
- has not reported the full amount of tax properly due on a previously filed return that was due on or before December 31, 2015.

All tax types administered by DOR are included, with the exception of the preferred provider excise,[2] the deeds excise,[3] the abandoned bottle deposits,[4] and taxes for which the Commissioner would not have the sole authority to waive penalties, such as taxes administered under the International Fuels Tax Agreement (IFTA).[5]

IV. General Criteria

Except as discussed in Section VII below, amnesty will be granted to any eligible taxpayer who files an Amnesty Return and pays the full amount of tax and interest properly due in connection with a tax return that was due on or before December 31, 2015, for which no return was previously filed. Amnesty will also be granted to any eligible taxpayer who files an Amnesty Return and pays all additional tax and interest properly due in connection with a tax return that was due on or before December 31, 2015 where the prior return did not include the full amount of tax properly due. Any preexisting unpaid assessment[6] for a particular tax type and tax period must be fully paid prior to the submission of an Amnesty Return filed for that tax type and period.

Where an Amnesty Return seeks amnesty for more than one type of tax, the Amnesty Program applies separately to each tax type reported on the Amnesty Return. The Amnesty Program does not apply to a tax type not included in an Amnesty Return. An Amnesty Return must be filed during the Amnesty Period, submitted electronically and accompanied by an electronic payment for the full amount of tax and interest properly due.

Participation in the Amnesty Program and the payment of any tax and interest does not constitute a forfeiture of statutory rights of appeal or an admission that the tax paid is the correct amount of liability due.

The Department will not initiate a criminal investigation or seek prosecution with respect to a tax type and the tax periods included in any Amnesty Return where such return was submitted and the accompanying tax was paid in good faith.

V. Benefits of Amnesty Program

A. Penalty Amnesty

Under the Amnesty Program, the Commissioner will waive the penalties listed below that could otherwise be assessed for eligible tax types and tax periods for the taxpayer's:

1. failure to timely file a return for any tax for an eligible tax period as determined under G.L. c. 62C, §§ 30, 30A, 33, 34;
2. failure to file a proper return for any tax for an eligible tax period as determined under G.L. c. 62C, § 28;
3. failure to meet the requirements of G.L. c. 111M, § 2;
4. failure to timely pay any tax liability as determined under G.L. c. 62C, §§ 33, 35, G.L. c. 62B, § 7, and/or G.L. c. 63B, §§ 9, 10;
5. failure to file, report or pay electronically, as determined under G.L. c. 62C, § 33(g);
6. failure to pay the proper amount of an estimated payment as determined under G.L. c. 62B, § 14, G.L. c. 62C, § 45A, and/or G.L. c. 63B, § 3; or
7. substantial understatement of tax on a previously filed return or adoption of an inconsistent position on previously filed returns as determined under G.L. c. 62C, §§ 35A, 35D, where such understatement or inconsistent position is corrected through an Amnesty Return and the tax has not been previously assessed by the Department.

Interest, other than interest directly attributable to the listed penalties, cannot be waived.

B. Limited Look-Back Period for Non-filers

Except as discussed in Section VII below, the Commissioner will apply a limited 3 year look-back period (the "limited look-back period") to eligible non-filers who participate in the Amnesty Program. The limited look-back period applies separately to each tax type reported on an Amnesty Return by a non-filer of that tax type. This means that a taxpayer who has failed to file a return or pay any tax for any periods that were due before January 1, 2013, without regard to extensions, will not be required to file those returns or pay any tax due for those tax types and periods, and the Department will not initiate an audit to verify the tax due for these periods.

The limited look-back period will apply to taxpayers who file Amnesty Returns for all unfiled returns for a particular tax type that were due from January 1, 2013 through December 31, 2015, without regard to extensions. The Amnesty Return must be accompanied by a payment of the full amount of tax and interest properly due. [\[7\]](#)

If the Department has been in contact with the taxpayer, or any related taxpayer, with regard to one or more tax types, the taxpayer may not qualify for the limited look-back period as to such tax types, see Section VII below. A taxpayer who does not qualify for the limited look-back period may nonetheless benefit from a waiver of tax penalties as explained in Section VII below. The following examples illustrate the limited look-back period:

Example 1: A calendar year personal income taxpayer, who has never filed a return in Massachusetts, files Amnesty Returns and pays all tax and interest due for tax year 2014 (return due April 15, 2015), tax year 2013 (return due April 15, 2014) and tax year 2012 (return due April 15, 2013). The taxpayer will qualify for the limited look-back period and will not be required to file personal income tax returns and pay tax for prior years.

Example 2: Same facts as Example 1, except the taxpayer has already filed the return and paid the tax due for tax year 2014 on April 15, 2015. Under these facts, if the taxpayer files Amnesty Returns and pays all tax and interest due for tax year 2013 (return due April 15, 2014) and tax year 2012 (return due April 15, 2013), the taxpayer will qualify for the limited look-back period and will not be required to file personal income tax returns and pay tax for prior years.

Example 3: A taxpayer, who has never registered as a vendor, collected a sales tax or filed a monthly sales tax return in Massachusetts, registers and files Amnesty Returns and pays all tax and interest due for each monthly tax period ending December 31, 2012, through the tax period ending November 30, 2015. The taxpayer will qualify for the limited look-back period and will not be required to file sales tax returns and pay tax for prior periods.

Example 4: A business taxpayer who timely filed corporate excise returns for tax years 2012 through 2014 files Amnesty Returns to report additional amounts due for each of those years and pays in full the additional amount due. The taxpayer does not qualify for the limited look-back period because it has previously filed all returns due from January 1, 2013 through December 31, 2015. However, the taxpayer may still benefit from a waiver of tax penalties that might otherwise apply in connection with the tax reported on the Amnesty Return.

Example 5: A taxpayer received a notice from the Department stating that it is under review in relation to monthly sales tax returns starting with the period ending December 31, 2011, through the period ending November 30, 2015. Because of this contact, the taxpayer does not qualify for the limited look-back period. However, the taxpayer may still benefit from a waiver of tax penalties. In order to participate in the Amnesty Program, the taxpayer must file Amnesty Returns for all of the tax periods under review and pay all tax and interest for each monthly tax period identified in the notice. By participating in the Amnesty Program, the taxpayer is not giving up its statutory rights of appeal or making an admission that the tax paid is the correct amount of liability due.

VI. Amnesty Program Procedures

A. Amnesty Return

An eligible taxpayer that participates in the Amnesty Program is required to submit an Amnesty Return online via the Department's Amnesty website at www.mass.gov/TaxAmnesty. A business taxpayer must make a single submission of an Amnesty Return that includes all of the tax types and amounts for which the taxpayer is seeking amnesty. Once a business taxpayer submits an Amnesty Return, the system will not allow the taxpayer to file any additional Amnesty Returns or make changes to any Amnesty Return previously filed. A non-business taxpayer may file one Amnesty Return or separate Amnesty Returns for most tax types; however, a taxpayer must submit separate Amnesty Returns for fiduciary income tax and estate tax. Further instructions will be provided on the Department's Amnesty website.

A taxpayer that files for amnesty is required to retain (but not submit) copies of the completed tax returns (e.g., Form 1, Form 355, et al) for the tax years and the tax types for which it filed for amnesty and must retain all supporting documents to be provided to the Department for verification upon request. Where a taxpayer has made use of a transferable credit to reduce amounts reported as due on an Amnesty Return, the taxpayer must keep a record of the certificate number(s) for such credit.

An Amnesty Return cannot be filed to claim a refund or a credit attributable to an overpayment of tax.

B. Payments

A taxpayer that participates in the Amnesty Program must pay the entire balance shown as due on the Amnesty Return online via the Department's Amnesty website.^[8] If the taxpayer chooses to make an electronic payment using a credit card, a convenience fee will be charged by the selected credit card vendor. The online amnesty application will calculate the correct interest and total amnesty balance due.

VII. Exceptions to and Limitations of the Amnesty Program

Notwithstanding the above, the following exceptions and limitations apply to the Amnesty Program.

A. Ineligible Taxpayers

The following taxpayers are not eligible to participate in the Amnesty Program:

1. A taxpayer engaged in pending litigation with the Commissioner is not eligible to participate in the Amnesty Program with regard to a particular tax type and period if, as of April 1, 2016, the Appellate Tax Board or any court of law considering such litigation has ruled in the Commissioner's favor with regard to a disputed issue involving that tax type and period. The taxpayer is also ineligible for the Amnesty Program with regard to the litigated tax type in subsequent tax periods where the litigated issue and/or substantially similar issues arise.
2. A taxpayer who is seeking a waiver of tax penalties related to a pre-existing assessment, whether paid or unpaid;
3. A taxpayer who is seeking a refund of tax or a credit of an overpayment;
4. A taxpayer who has been or is the subject of a tax-related criminal investigation or prosecution as to any tax;
5. A taxpayer who delivers or discloses or who has delivered or disclosed a false or fraudulent application, document, return or other statement to the Department in connection with an Amnesty Return;
6. A taxpayer who fails to report the full amount of tax properly due on an Amnesty Return or who attempts in any manner to defeat or evade a tax by using the Amnesty Program;
7. A taxpayer who has entered into a settlement agreement with the Commissioner including, without limitation, settlement reached through the Department's Litigation Bureau, Office of Appeals, or Offer-in-Settlement Unit, is not eligible to participate in the Amnesty Program with regard to the particular tax type and period included in the settlement agreement; and
8. A taxpayer is not eligible to participate in the Amnesty Program with regard to the particular tax type and period for which the taxpayer was granted amnesty under St. 2014, c. 165, § 264 or St. 2015, c. 2, § 12.

B. Limitations to Amnesty Program

Every Amnesty Return filed under the Amnesty Program is subject to verification and assessment by the Commissioner. G.L. c. 62C, § 26(b), et seq. All payments and returns submitted to the Commissioner under the Amnesty Program will be considered to be voluntary and payments will be applied to the amounts reported on the Amnesty Return. Any overpayments will be applied to the taxpayer's tax account(s), or refunded, in accordance with the provisions of 830 CMR 62C.33.1.

C. Limitations to Limited Look-Back Period for Non-Filers

The limited look-back period shall not apply in the case of a tax type for which the taxpayer has previously filed all returns that were due from January 1, 2013, through December 31, 2015, without regard to extensions. However, in such cases, the taxpayer may still be eligible to participate in the Amnesty Program and to receive a waiver of tax penalties for any amounts of tax reported on the Amnesty Return for that tax type. See Example 4 in Section V.B., above.

The limited look-back period shall not apply in the case of a taxpayer with respect to a particular tax type where the Department has been in contact with the taxpayer about the taxpayer's tax obligations for that tax type for any tax periods either during or prior to the limited look-back period. Similarly, the limited look-back shall not apply in the case of a taxpayer with respect to a particular tax type when the Department has been in contact with a related taxpayer about an issue that is substantially similar to one that impacts the taxpayer's tax obligations for that tax type for any tax periods either during or prior to the limited look-back period. In both such cases, the taxpayer and any related taxpayer may still be eligible to participate in the Amnesty Program and to receive a waiver of tax penalties for the periods under audit and any additional periods due. See Example 5 in Section V.B., above.

The limited look-back period shall not apply in the case of a taxpayer filing an Amnesty Return to report estate tax.^[9] The taxpayer may still be eligible to participate in the Amnesty Program and to receive a waiver of tax penalties for any estate tax fully paid and reported on an Amnesty Return.

The limited look-back period shall not apply in the case of a taxpayer filing an Amnesty Return to report trustee tax (i.e., sales/use tax, meals tax, withholding tax, etc.) where the tax was actually collected in whole or part. The taxpayer is otherwise eligible to participate in the Amnesty Program and to receive a waiver of tax penalties for any trustee tax fully paid and reported on an Amnesty Return.

The limited look-back period does not preclude the verification of any previously filed returns or the assessment of tax by the taxpayer or the Commissioner with regard to such returns.^[10]

VIII. Contact Information

Additional information about this Amnesty Program is available on the Department's website at www.mass.gov/TaxAmnesty.

/s/Mark E. Nunnelly

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Commissioner of Revenue

MEN:RHF:me

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^[1] Section 151 of Chapter 46 of the Acts of 2015, as amended by sections 17 and 18 of Chapter 70 of the Acts of 2016, authorizes the Commissioner to establish and determine the scope of the Amnesty Program.

^[2] G.L. c. 176I.

^[3] G.L. c. 64D.

^[4] G.L. c. 94, § 323B.

^[5] G.L. c. 64F, § 5A.

^[6] A preexisting unpaid assessment means all amounts previously billed, including interest and penalties, if any.

^[7] Sales and use taxes filed by a vendor will be considered to be the same tax type for purposes of Amnesty Return filing requirements.

^[8] Please note that all preexisting liabilities not reported on an Amnesty Return for a particular tax type and tax period must also be paid separately either using MassTaxConnect or WebFile for Income.

^[9] G.L. c. 65C.

^[10] G.L. c. 62C, §§ 26, 30, 30A.